

Adopted	Rejected
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COMMITTEE REPORT

YES:	6
NO:	5

MR. SPEAKER:

Your Committee on Commerce, Economic Development and Small Business, to which was referred Senate Bill 536, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:

- 1 Page 2, between lines 38 and 39, begin a new paragraph and insert:
- 2 "SECTION 2. IC 6-3.1-29 IS ADDED TO THE INDIANA CODE
- 3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2005]:
- 5 **Chapter 29. Life Long Learning Tax Credit**
- 6 **Sec. 1. As used in this chapter, "account" refers to an account**
- 7 **that qualifies as a life long learning account under this chapter.**
- 8 **Sec. 2. As used in this chapter, "credit" refers to a life long**
- 9 **learning tax credit granted under this chapter against state tax**
- 10 **liability.**
- 11 **Sec. 3. As used in this chapter, "department" refers to the**
- 12 **department of workforce development.**
- 13 **Sec. 4. As used in this chapter, "eligible education expense"**
- 14 **means a payment for education, including tuition and fees and**
- 15 **similar payments, books, supplies, equipment, and tools or supplies**

1 that may be retained by the employee after completion of a course
2 of instruction, other than the following:

3 (1) Meals, lodging, or transportation.

4 (2) Any course or other education involving sports, games, or
5 hobbies.

6 Sec. 5. As used in this chapter, "eligible employee" means the
7 following:

8 (1) A full-time employee of a participating employer.

9 (2) A part-time employee of a participating employer, if the
10 part-time employee has the part-time employee's principal
11 place of business with the participating employer in Indiana
12 and the participating employer elects in the participating
13 employer's application to the department under this chapter
14 to include part-time employees in the participating employer's
15 plan.

16 Sec. 6. As used in this chapter, "full-time employee" means an
17 individual who:

18 (1) is employed for consideration for at least thirty-five (35)
19 hours each week or who renders any other standard of service
20 generally accepted by custom or specified by contract as
21 full-time employment; and

22 (2) has the individual's principal place of employment in
23 Indiana with a participating employer.

24 Sec. 7. As used in this chapter, "participating employer" means
25 a corporation, person, or pass through entity that:

26 (1) employs at least one (1) eligible employee; and

27 (2) is selected under this chapter to participate in a pilot life
28 long learning tax credit program under this chapter.

29 Sec. 8. As used in this chapter, "pass through entity" means a:

30 (1) corporation that is exempt from the adjusted gross income
31 tax under IC 6-3-2-2.8(2);

32 (2) partnership;

33 (3) trust;

34 (4) limited liability company; or

35 (5) limited liability partnership.

36 Sec. 9. As used in this chapter, "plan" refers to a life long
37 learning plan that provides for the payment of eligible education
38 expenses through an account.

1 **Sec. 10.** As used in this chapter, "state tax liability" means a
 2 taxpayer's total tax liability that is incurred under:

- 3 (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- 4 (2) IC 27-1-18-2 (the insurance premiums tax); and
- 5 (3) IC 6-5.5 (the financial institutions tax);

6 as computed after the application of the credits that under
 7 IC 6-3.1-1-2 are to be applied before the credit provided by this
 8 chapter.

9 **Sec. 11.** The pilot life long learning tax credit program is
 10 established to encourage life long learning practices by eligible
 11 employees. The department shall administer the program.

12 **Sec. 12. (a)** An eligible employee that makes an employee
 13 contribution to an account is eligible for a credit in a taxable year
 14 against the employee's state tax liability in the taxable year.

15 **(b)** The amount of the credit is equal to the least of the
 16 following:

- 17 (1) The employee contribution made by an eligible employee
 18 to the account in the taxable year.
- 19 (2) Five hundred dollars (\$500).
- 20 (3) The amount of the credits allocated by the department to
 21 the eligible employee for the taxable year.

22 **Sec. 13. (a)** A participating employer that makes an employer
 23 matching contribution to an account is eligible for a credit in a
 24 taxable year against the participating employer's state tax liability
 25 in the taxable year.

26 **(b)** The amount of the credit is equal to the amount determined
 27 under STEP THREE of the following formula:

28 **STEP ONE:** Determine the lesser of the following for each
 29 account:

- 30 **(A)** The participating employer contribution made to the
 31 account of an eligible employee in the taxable year.
- 32 **(B)** Five hundred dollars (\$500).

33 **STEP TWO:** Determine the sum of the STEP ONE amounts.

34 **STEP THREE:** Determine the lesser of the following:

- 35 **(A)** The STEP TWO amount.
- 36 **(B)** The amount of the credit allocated by the department
 37 to the participating employer for the taxable year.

38 **Sec. 14. (a)** If:

(1) a pass through entity does not have state income tax liability against which the credit provided by this chapter may be applied; and

(2) the pass through entity would be eligible for a credit under this chapter if the pass through entity were a taxpayer; a shareholder, partner, or member of the pass through entity is entitled to a credit under this chapter.

(b) Subject to this chapter, the amount of the credit to which a shareholder, partner, or member is entitled is equal to:

(1) the credit determined for the pass through entity for the taxable year as if the pass through entity were a taxpayer with state tax liability in the amount of the credit; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder or partner is entitled.

Sec. 15. (a) If the amount of the credit provided under this chapter for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess over to subsequent taxable years until the entire credit is used. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year.

(b) A taxpayer is not entitled to a carryback or refund of any unused credit.

Sec. 16. To receive the credit, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department of state revenue. The taxpayer shall submit to the department of state revenue the information that the department of state revenue determines is necessary for the department of state revenue to determine whether the taxpayer is eligible for the credit.

Sec. 17. To qualify as a life long learning plan under this chapter, the plan must meet all of the following criteria:

(1) Be in writing.

(2) Cover at least all full-time employees of the participating employer and, if the participating employer elects to cover part-time employees under the plan, all part-time employees.

(3) Provide for the establishment of an account for each

1 eligible employee to which:

2 (A) an eligible employee makes contributions for the
3 payment of eligible education expenses; and

4 (B) the participating employer makes matching
5 contributions on a dollar for dollar basis for the purpose of
6 paying eligible education expenses.

7 However, the plan may limit the maximum amount that the
8 participating employer must match. The limitation must
9 uniformly apply to all full-time employees of the employer. If
10 the participating employer elects to have part-time employees
11 participate in the plan, the participating employer may impose
12 a different uniform limitation for part-time employees.

13 (4) Subject to section 18 of this chapter, provide that the
14 account may be used only to pay eligible education expenses
15 incurred by or on behalf of an eligible employee for education
16 selected at the sole discretion of the eligible employee.

17 (5) Provide that the availability of the plan does not reduce or
18 substitute for any other education program provided by the
19 participating employer, including the provision, by a
20 participating employer, of courses of instruction for the
21 participating employer's eligible employees (including books,
22 supplies, and equipment).

23 (6) Provide procedures for dissemination of information about
24 the plan, including the federal and state income tax
25 consequences of the plan.

26 (7) Provide for reporting to the department of state revenue
27 of the information prescribed by the department of state
28 revenue.

29 (8) Provide procedures for the allocation of credits certified by
30 the department for the participating employer's eligible
31 employees among the participating employer's eligible
32 employees.

33 (9) Be certified by the department as a plan.

34 Sec. 18. (a) To qualify as a life long learning account under this
35 chapter, the account must meet all the following criteria:

36 (1) Be established and administered in accordance with a plan.

37 (2) Subject to this section, be used only to pay eligible
38 education expenses incurred by or on behalf of an eligible

employee for education selected at the sole discretion of the eligible employee.

(3) Be held by a trustee or fiduciary, including the treasurer of state, approved by the department.

(b) Money in an account that is contributed by an eligible employee is held in trust for the eligible employee. An eligible employee may withdraw the eligible employee's contribution to the account at any time for any purpose. However, if the amount is not withdrawn to:

(1) pay eligible education expenses; or

(2) transfer the money in the manner prescribed by the department of state revenue to the account of another participating employer;

the individual forfeits any tax benefit that the individual received under this chapter for the amount withdrawn. The department of state revenue shall prescribe a method for recovery of the tax benefit in the taxable year in which the event causing the forfeiture of the tax benefit occurs.

(c) An account may consist of gifts to an account in addition to contributions by an eligible employee or a participating employer. However, a gift to an account may be used only to pay eligible education expenses.

(d) Transfer of an unused employer contribution as an employer contribution to another account does not result in forfeiture of a tax benefit received under this chapter. However, the employer is not eligible for an additional credit for the amount transferred.

Sec. 19. A taxpayer that receives a credit for a contribution to an account is not entitled to a separate deduction for an eligible education expense in the taxable year that the eligible education expense is paid from the account. If the taxpayer deducted the eligible education expense in computing for federal income tax purposes:

(1) federal adjusted gross income in the case of an individual; or

(2) in the case of taxpayers other than an individual:

(A) federal taxable income (as defined in Section 63 of the Internal Revenue Code) in the case of corporations;

(B) federal life insurance company taxable income (as

1 defined in Section 801 of the Internal Revenue Code) in the
 2 case of life insurance companies (as defined in Section
 3 816(a) of the Internal Revenue Code) that are organized
 4 under Indiana law;
 5 (C) federal taxable income (as defined in Section 832 of the
 6 Internal Revenue Code) in the case of insurance companies
 7 subject to tax under Section 831 of the Internal Revenue
 8 Code and organized under Indiana law; or
 9 (D) federal taxable income (as defined for trusts and estates
 10 in Section 641(b) of the Internal Revenue Code) in the case
 11 of trusts and estates;

12 the taxpayer shall add the amount of the deduction back in
 13 determining state adjusted gross income under IC 6-3-1-3.5 and
 14 IC 6-5.5-1-2.

15 Sec. 20. The department shall establish a program to provide
 16 information to participating employers and eligible employees
 17 about the life long learning tax credit program established by this
 18 chapter.

19 Sec. 21. (a) The department shall establish a program to certify
 20 participating employer and eligible employee contributions to an
 21 account as eligible for a credit. The program must provide that the
 22 participating employer applies for the credits on behalf of the
 23 participating employer and the participating employer's eligible
 24 employees. The program may permit an application to be made
 25 that covers more than one (1) taxable year.

26 (b) The total amount of credits approved in a state fiscal year
 27 may not exceed the amount transferred in the state fiscal year from
 28 the skills 2016 training fund to the state general fund under
 29 IC 22-4-24.5-1(c), less any administrative fees retained by the
 30 department under subsection (e). Qualifying applicants for a credit
 31 that apply to the department in the manner and in the form
 32 prescribed by the department shall be certified for a credit in the
 33 amount that the applicant estimates will be contributed to the
 34 accounts of eligible employees by lottery conducted by the
 35 department until the maximum amount of credits allowed under
 36 this section for a state fiscal year has been allocated among
 37 qualifying applicants. The certification may cover more than one
 38 (1) taxable year and need not match the state fiscal year of the

transfer from the skills 2016 training fund to the year the credit is taken. However, the department may provide a procedure for an applicant that is denied a tax credit solely as a result of the cap imposed by this subsection to be given priority in the award of a credit in a subsequent state fiscal year. An award of the credit must indicate the part of the award that is for participating employer contributions and the part of the award that is available to eligible employees for eligible employee contributions.

(c) The certification of a credit under this section applies only to contributions made after the date of the certification.

(d) If the credits allocated to a participating employer or an eligible employee are not used as provided in the certification, the department may reallocate the unused credits to another qualified applicant in the order determined by the department.

(e) The department may retain from the amount transferred in a state fiscal year from the skills 2016 training fund to the state general fund under IC 22-4-24.5-1(c) an administrative allowance to reimburse the department for administering the pilot life long learning tax credit program.

Sec. 22. (a) The department shall provide for a study of the pilot life long learning tax credit program established by this chapter. The evaluation must include a fiscal analysis of the program, including an assessment of the effectiveness of the provisions of this chapter to:

- (1) retain jobs;
- (2) increase income; and
- (3) increase the tax base.

The study must measure the extent to which life long learning practices are increased. The analysis may include a review of the practices and experiences of other states or political subdivisions with laws similar to this chapter.

(b) The department shall require employers applying for a credit under this chapter to provide the information that the department determines is necessary to carry out the study required by this section.

(c) The department shall report to the legislative council, not later than November 1 of each year in an electronic format under IC 5-14-6, on the progress of its study.

Sec. 23. Subject to the approval of the budget agency, the department may receive and accept gifts and other donations from any public or private source in its administration of the program."

Page 3, between lines 21 and 22, begin a new paragraph and insert:

"SECTION 6. IC 22-4-24.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) The skills 2016 training fund is established to do the following:

(1) Administer the costs of the skills 2016 training program established by IC 22-4-10.5.

(2) Undertake any program or activity that furthers the purposes of IC 22-4-10.5.

(3) Refund skills 2016 training assessments erroneously collected and deposited in the fund.

(b) ~~Fifty-five~~ **Fifty-four** percent ~~(55%)~~ **(54%)** of the money in the fund shall be allocated to the state educational institution established under IC 20-12-61. The money so allocated to that state educational institution shall be used as follows:

(1) An amount to be determined annually shall be allocated to the state educational institution established under IC 20-12-61 for its costs in administering the training programs described in subsection (a). However, the amount so allocated may not exceed fifteen percent (15%) of the total amount of money allocated under this subsection.

(2) After the allocation made under subdivision (1), fifty percent (50%) shall be used to provide training to participants in joint labor and management building trades apprenticeship programs approved by the United States Department of Labor's Bureau of Apprenticeship Training.

(3) After the allocation made under subdivision (1), fifty percent (50%) shall be used to provide training to participants in joint labor and management industrial apprenticeship programs approved by the United States Department of Labor's Bureau of Apprenticeship Training.

(c) One percent (1%) of the money in the fund shall be transferred to the state general fund to replace revenue lost as the result of life long learning credits granted under IC 6-3.1-29 plus any administrative fees retained by the department of workforce development under IC 6-3.1-29-21(e).

1 ~~(c)~~ **(d)** The remainder of the money in the fund shall be allocated as
2 follows:

3 (1) An amount to be determined annually shall be set aside for the
4 payment of refunds from the fund.

5 (2) The remainder of the money in the fund after the allocations
6 provided for in ~~subsection~~ **subsections** (b) **and** (c) and
7 subdivision (1) shall be allocated to other incumbent worker
8 training programs.

9 ~~(d)~~ **(e)** The fund shall be administered by the board. However, all
10 disbursements from the fund must be recommended by the incumbent
11 workers training board and approved by the board as required by
12 IC 22-4-18.3-6.

13 ~~(e)~~ **(f)** The treasurer of state shall invest the money in the fund not
14 currently needed to meet the obligations of the fund in the same manner
15 as other public money may be invested. Interest that accrues from these
16 investments shall be deposited in the fund.

17 ~~(f)~~ **(g)** Money in the fund at the end of a state fiscal year does not
18 revert to the state general fund.

19 ~~(g)~~ **(h)** The fund consists of the following:

20 (1) Assessments deposited in the fund.

21 (2) Earnings acquired through the use of money belonging to the
22 fund.

23 (3) Money received from the fund from any other source.

24 (4) Interest earned from money in the fund.

25 (5) Interest and penalties collected.

26 ~~(h)~~ **(i)** All money deposited or paid into the fund is appropriated
27 annually for disbursements authorized by this section.

28 ~~(i)~~ **(j)** Not later than April 30 each year, the department shall prepare
29 an annual report that shows the amount of unobligated money in the
30 fund on that date.

31 ~~(j)~~ **(k)** The incumbent workers training board may reallocate the
32 unobligated money shown in the annual report required by subsection
33 ~~(j)~~ **(j)** in accordance with subsections (b) and ~~(c)(2)~~ **(d)(2)**.

34 ~~(k)~~ **(l)** Any balance in the fund does not lapse but is available
35 continuously to the department for expenditures consistent with this
36 chapter."

37 Page 4, between lines 27 and 28, begin a new paragraph and insert:

38 "SECTION 10. [EFFECTIVE JULY 1, 2005] **IC 6-3.1-29, as added**

1 **by this act, applies only to taxable years beginning after December**
2 **31, 2005."**

3 Renumber all SECTIONS consecutively.
 (Reference is to SB 536 as reprinted March 1, 2005.)

and when so amended that said bill do pass.

Representative Borrer